Edmund G. Brown Jr., Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
Office of Legal Services
980 9th Street, Suite 500, Sacramento, CA 95814
Telephone: 916-322-6727 | Fax: 916-322-3968
www.HealthHelp.ca.gov

DATE: June 22, 2018

ACTION: Notice of Rulemaking Action
Title 28, California Code of Regulations

SUBJECT: Cancellations, Rescissions, and Nonrenewals of Health Care Service Plan Enrollment, Subscription, or Contract; Deleting old sections 1300.65, 1300.65.1 and 1300.65.2; Adding new sections 1300.65, 1300.65.1, 1300.65.2, 1300.65.3, 1300.65.4, 1300.65.5 in Title 28, California Code of Regulations; Control No. 2017-5214.

PUBLIC PROCEEDINGS:

Notice is hereby given that the Director of the Department of Managed Health Care (Department) proposes to adopt the proposed regulations under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act) clarifying standards and requirements to ensure health care service plans comply with state and federal requirements for cancellation, rescissions, and nonrenewals of health care coverage.

This rulemaking action proposes to delete old sections 1300.65, 1300.65.1, and 1300.65.2, and to adopt new sections 1300.65, 1300.65.1, 1300.65.2, 1300.65.3, 1300.65.4 and 1300.65.5, in Title 28, California Code of Regulations. Before undertaking this action, the Director of the Department (Director) will conduct written public proceedings, during which time any interested person, or such person's duly authorized representative, may present statements, arguments, or contentions relevant to the action described in this notice.

PUBLIC HEARING:

The Department has not scheduled a hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD:

Any interested person, or his or her authorized representative, may submit written statements, arguments or contentions (hereinafter referred to as comments) relating to the proposed regulatory action by the Department. Comments must be received by the Department, Office of Legal Services, **by 5 p.m. on August 6, 2018,** which is hereby designated as the close of the written comment period.

Please address all comments to the Department of Managed Health Care, Office of Legal Services, Attention: Regulations Coordinator. Comments may be transmitted by regular mail, fax, email or via the Department's website:

Website:	http://www.dmhc.ca.gov/LawsRegulations.aspx#open
Email:	regulations@dmhc.ca.gov
Mail:	Department of Managed Health Care Office of Legal Services Attn: Regulations Coordinator 980 9th Street, Suite 500 Sacramento, CA 95814
Fax:	(916) 322-3968

Please note: if comments are sent via the website, email or fax, there is no need to send the same comments by mail delivery. All comments, including via the website, email, fax, or mail, should include the author's name and a U.S. Postal Service mailing address so the Department may provide commenters with notice of any additional proposed changes to the regulation text.

Please identify the action by using the Department's rulemaking title and control number, **Cancellation of Enrollment, Control No. 2017-5214** in any of the above inquiries.

CONTACTS: Inquiries concerning the proposed adoption of these regulations may be directed to the following person(s):

Jennifer Willis
Attorney IV
Department of Managed Health Care
Office of Legal Services
980 9th Street, Suite 500
Sacramento, CA 95814
(916) 324-9014
(916) 322-3968 fax
jennifer.willis@dmhc.ca.gov

Emilie Alvarez
Regulations Coordinator
Department of Managed Health Care
Office of Legal Services
980 9th Street, Suite 500
Sacramento, CA 95814
(916) 445-9960
(916) 322-3968 fax
emilie.alvarez@dmhc.ca.gov

AVAILABILITY OF DOCUMENTS:

The Department has prepared and has available for public review the Initial Statement of Reasons, text of the proposed regulation and all information upon which the proposed regulation is based (rulemaking file). This information is available by request to the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Suite 500, Sacramento, CA 95814, Attention: Regulations Coordinator.

The Notice of Proposed Rulemaking Action, the proposed text of the regulation, and the Initial Statement of Reasons are also available on the Department's website at: http://www.dmhc.ca.gov/LawsRegulations.aspx#open.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the Regulation Coordinator named above.

AVAILABILITY OF MODIFIED TEXT:

The full text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days before the date the Department adopts the regulation. A request for a copy of any modified regulation(s) should be addressed to the Regulations Coordinator. The Director will accept comments via the Department's website, mail, fax, or email on the modified regulation(s) for 15 days after the date on which the modified text is made available. The Director may thereafter adopt, amend, or repeal the foregoing proposal substantially as set forth without further notice.

AUTHORITY AND REFERENCE:

Pursuant to Health and Safety Code section 1341.9, the Department is vested with all duties, powers, purposes, responsibilities, and jurisdiction as they pertain to health care service plans (plans) and the health care service plan business.

Health and Safety Code section 1344 grants the Director authority to adopt, amend, and rescind regulations as necessary to carry out the provisions of the Knox-Keene Act, including rules governing applications and reports, and defining any terms as are necessary to carry out the provisions of the Knox-Keene Act.

Health and Safety Code section 1365 prohibits an enrollment or subscription from being canceled or not renewed (nonrenewal) unless certain circumstances are present and specific requirements are met.

Health and Safety Code section 1389.21 prohibits an enrollment, subscription, or contract from being rescinded unless certain circumstances are present and specific requirements are met.

45 Code of Federal Regulations parts 156.270 and 155.430 prohibit an enrollment, subscription, or contract from being canceled, rescinded, or not renewed unless certain circumstances are present and specific requirements are met.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Purpose of the Regulation:

The purpose of this rulemaking action is to clarify and interpret the rights and responsibilities of plans, providers, and enrollees prior to, during, and following cancellations, rescissions, or nonrenewals of an enrollee's health care coverage.

Health and Safety Code sections 1365 and 1389.21 prohibit an enrollee's health care enrollment, subscription, or contract from being canceled, rescinded or not renewed except for seven reasons, summarized as follows: (1) nonpayment of premiums, (2) fraud or intentional misrepresentation, (3) changes to where an individual subscriber resides, lives, or works that removes him or her from the plan's service area, (4) violation of a material contract provision relating to employer contribution or group participation rates, (5) plan ceases, in part or whole, to offer new health care service plan contracts in the individual or group markets, or all markets, in the state, (6) plan withdraws, completely or partially, from the market, and (7) changes to the membership status in a guaranteed association in the case of a group health benefit plan. The law specifies that unless one of these seven reasons is present, and the specific requirements as to the reason are met, an enrollment, subscription, or contract cannot be canceled, rescinded, or not renewed.

This regulation package seeks to amend and clarify current regulations in order to address identified ambiguities and inconsistencies existing in current regulations, as well as updating current regulations to address changes in federal law. This rulemaking also seeks to clarify and streamline the grievance process for cancellations, rescissions, and nonrenewals.

Summary of Existing Laws and Regulations:

State grace period:

Health and Safety Code Section 1365(a)(1)(A) states that a plan shall not cancel an enrollment or subscription for non-payment of premiums, unless the enrollee has "been duly notified and billed for the charge and at least a 30-day grace period has elapsed since the date of the notification or, if longer, the period time required for notice and any other requirements pursuant to [federal law]." In addition, Health and Safety Code section 1365(b)(1) provides that an "enrollee or subscriber who alleges that an enrollment or subscription has been or will be improperly canceled, rescinded, or not renewed may request a review by the director pursuant to Section 1368."

Current California Code of Regulations, title 28, section 1300.65, among other things, specifies the details of the 30-day grace period that enrollees are entitled to when they fail to pay a premium. The current regulation states the 30-day grace period begins no earlier than the first day after the last date of paid coverage, which, at a minimum shall

extend through the thirtieth day after the last date of paid coverage. California Code of Regulations, title 28, section 1300.65, also requires plans to send out two notices before coverage can been canceled or not renewed: the Notice of Consequence for Nonpayment of Premiums, and the Notice of Cancellation for Nonpayment of Premiums and Grace Period (hereinafter Notice of Cancellation). Current regulations require the Notice of Consequence for Nonpayment of Premiums contain certain information, and be sent concurrent with the billing information and prior to the commencement of the grace period. The regulations require the Notice of Cancellation contain certain information, and be sent no later than five business days after the last day of paid coverage. California Code of Regulations, title 28, section 1300.65(c)(3)(A)(iii) provides that if the plan fails to receive the past due amount on or before the last day of the grace period, coverage may be canceled prospectively only after the end of the grace period.

Federal grace period:

Section 1412 of the Patient Protection and Affordable Care Act[1] (ACA) permits cancellation or nonrenewal for nonpayment of premiums "in the case of any nonpayment of premiums by [an APTC Enrollee]" if the QHP Issuer "notif[ies] the Secretary of such nonpayment; and allow[s] a [three]-month grace period for nonpayment of premiums before discontinuing coverage." Neither state nor federal law specifies when the three-month grace period starts or ends; however, 45 Code of Federal Regulations part 156.270, subd. (f) provides that if an enrollee is delinquent on premium payment, the plan must provide the enrollee with notice of such payment delinquency. Current California Code of Regulations, title 28, section 1300.65.2, subdivision (b)(1)(B), states that if the enrollee or subscriber does not pay outstanding premiums by day 15 of the first month of the federal grace period, the plan shall provide a Notice of Suspension to the enrollee or subscriber.

Federal Code of Regulations, title 45, part 156.270, subdivision (d)(1) provides that the Qualified Health Plan Issuer (QHP Issuer) shall "pay all appropriate claims for services rendered during the first month of the grace period and may pend claims for services rendered to the enrollee in the second and third months of the grace period."[2] [Emphasis Added]. However, current California Code of Regulations, title 28, section 1300.65.2, subdivision (b)(2) provides that during the second and third month of the grace period, the QHP Issuer shall suspend coverage for the enrollee. This language reveals an inconsistency between federal and state law. Federal law states that suspension in months two and three of the grace period is optional, while current California law states that suspension in months two and three of the grace period is mandatory. Current California Code of Regulations, title 28, section 1300.65.2, subdivision (b)(2) further requires plans to notify the enrollee's providers of the suspension by day 15 of the second month of the federal grace period, and to make any necessary system adjustment to the plan's real time eligibility and verification system to

[1] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended at 42 U.S.C. § 18001 (Supp. 2010)).
[2] 45 C.F.R. § 156.270(d)(1).

reflect the suspension status by day one of the second month of the federal grace period. Last, Federal Code of Regulations, title 45, part 156.270, subdivision (g) provides that if an enrollee exhausts the 3-month grace period without paying outstanding premiums, the plan shall terminate the enrollee's enrollment. On the other hand, California Code of Regulations, title 28, section 1300.65.2, subdivision (f) provides that if the enrollee does not pay outstanding premiums before the exhaustion of the federal grace period, the plan may cancel or not renew the enrollee's coverage.

Grievance form:

Current California Code of Regulations, title 28, section 1300.65.1, is a template form for enrollees, subscribers, or group contract holders to use to submit a grievance to the Department. Although enrollees, subscribers, or group contract holders are not required to use this form to submit grievances, the regulations do require that plans make this form or a form that meets the enumerated requirements readily available to its members.

Broad Objectives and Benefits of the Regulation:

Pursuant to Government Code section 11346.5(a)(3)(C), the broad objectives and benefits of these regulations are to clarify and make specific state and federal law relevant to the rights and responsibilities of the Department, plans, health providers, enrollees, subscribers, and group contract holders as they relate to notice and grace periods when an enrollment, subscription, or contract is cancelled, rescinded, or not renewed. The Department, plans, health providers, and enrollees, subscribers, and group contract holders will benefit from the proposed regulatory action by way of a transparent, consistent, and predictable process for cancellations, rescissions, or nonrenewals of an enrollment, subscription, or contract for health care coverage.

Proposed California Code of Regulations, title 28, section 1300.65 benefits plans, providers, and consumers by updating the "definitions" portion of the regulation. It also expands the scope of that section to state that the definitions contained therein apply to Health and Safety Code, sections 1365 and 1389, and to the entirety of Title 28, Division 1, Chapter 2, Article 6. Defining the terms not previously defined in this article will better clarify the rights and responsibilities of the parties for the various types of cancellations of an enrollment or subscription.

Proposed California Code of Regulations, title 28, section 1300.65, subdivision (b) benefits plans, providers, enrollees and subscribers by specifying the rights and responsibilities of the parties regarding grievances under Health and Safety Code section 1365, subdivision (b). The clarity of the rights and responsibilities of the parties, including provisions addressing a determination of a plan's non-compliance, will be beneficial in bringing consistency and predictability to the process.

Proposed California Code of Regulations, title 28, sections 1300.65.1, 1300.65.2, and 1300.65.3 benefit plans, providers, enrollees and subscribers by clarifying the ambiguity in the timeframes, content and scope of the required notices and grace periods for cancellations, rescissions, and nonrenewals that exists in the current regulations. This clarity benefits plan compliance when they have the authority or are mandated to cancel, rescind, or not renew an enrollee or subscriber's health care coverage. Similarly, the clarity of the proposed amendments to the regulations will benefit the enrollee or subscriber by affording him or her the protections of all the required notices and the full duration of the applicable grace periods to continue health care coverage.

Proposed California Code of Regulations, title 28, section 1300.65.3, subdivision (a)(3) benefits plans, providers, enrollees and subscribers by clarifying a plan has the discretion to suspend the coverage of its enrollees or subscriber during the second and third months of the 3-month federal grace period. The proposed regulation will be consistent with the federal regulation, thereby benefitting plans and their enrollees or subscribers by ensuring that plans provide three full months of a grace period instead of just a one month grace period, with the option to suspend health care coverage of the enrollee or subscriber during the second and third months.

Proposed California Code of Regulations, title 28, section 1300.65.4 benefits plans, providers, subscribers, and enrollees by clarifying that the rights of enrollees, subscribers, and group contract holders to file a grievance are the same as an expedited grievance pursuant to Health and Safety Code sections 1368, 1368.01, and their implementing regulations. In addition, the proposed rule will specify that grievances may be submitted to the plan and the Department, in various forms and formats, e.g., electronically, verbally, and in writing (using a template form, or any writing that contains the enumerated information necessary to process the grievance).

Proposed California Code of Regulations, title 28, section 1300.65.5 benefits plans, providers, enrollees and subscribers by maintaining model language that notifies enrollees, subscribers, and group contract holders about their rights to file a grievance. The Department believes maintaining the model language about an enrollee, subscriber, or group contract holder's grievance right, despite removing some other model language from the regulation, is necessary for a consistent and effective grievance process.

Comparison with Existing Federal Law:

The Department has compared these proposed regulations to existing federal law, including 42 United States Code section 18082, subdivision (c)(2)(B)(iv), and 45 Code of Federal Regulations, parts 156.270 and 155.430. The regulations proposed in this rulemaking action are neither inconsistent nor incompatible with existing federal law.

Evaluation of Inconsistency/Incompatibility with Existing State Regulation:

The Department compared the proposed regulations for inconsistency or incompatibility with any other state regulations, including sections 1300.68 and 1300.68.1 of title 28 of the California Code of Regulations, and has found that these are the only regulations dealing with cancellations, rescissions or nonrenewals of health plan contracts. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

CONSIDERATION OF ALTERNATIVES:

Pursuant to Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or has otherwise been identified or brought to the attention of the Department would be more effective in carrying out the purpose for which the above action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the requirements of the proposed regulations during the written comment period.

SUMMARY OF FISCAL IMPACT:

- Mandate on local agencies and school districts: None.
- Cost or Savings to any State Agency: None.
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Costs to private persons or businesses directly affected: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Statewide adverse economic impact directing affecting business and individuals: None.
- Effect on Housing Costs: None.

DETERMINATIONS:

The Department has made the following initial determinations:

The Department has determined the regulation will not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has determined the regulation will have no significant effect on housing costs.

The Department has determined the regulation does not affect small businesses. Health care service plans are not considered a small business under Government Code section 11342.610, subdivisions (b) and (c).

The Department has determined the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The Department has determined that this regulation will have no cost or savings in federal funding to the state.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS (Government Code section 11346.3, subdivision (b)):

Creation or Elimination of Jobs Within the State of California:

The amended regulations are designed to interpret and clarify existing state and federal requirements regarding the cancellation, rescission, or nonrenewal of health care coverage. The regulations build on current interpretations and clarify the rights and responsibilities of plans, enrollees, subscribers, and health care providers when an enrollment, subscription, or contract is canceled, rescinded, or not renewed. At the same time, the regulations replace current interpretations of the law proven to be problematic and unwieldy. In clarifying and interpreting the current state and federal law as it exists in California Health and Safety Code sections 1365 and 1389.21, and 45 Code of Federal Regulations parts 156.270 and 155.430, no jobs in California will be created or eliminated.

Creation of New Businesses or Elimination of Existing Businesses Within the State of California:

The amended regulation is designed to interpret and clarify state and federal requirements regarding the cancellation, rescission or nonrenewal of health care coverage. The regulations build on current interpretations and clarifications of the rights and responsibilities of plans, enrollees, subscribers, and health care providers when an enrollment, subscription, or contract is cancelled, rescinded, or not renewed. At the same time, the regulation replaces current interpretations proven to problematic and unwieldy. In clarifying and interpreting California Health and Safety Code sections 1365

and 1389.21, and 45 Code of Federal Regulations parts 156.270 and 155.430, no new businesses in California will be created or existing businesses eliminated.

Expansion of Businesses Currently Doing Business Within the State of California:

The amended regulation is designed to interpret and clarify state and federal requirements regarding the cancellations, rescissions, or nonrenewal of health care coverage. The regulation builds on current interpretations and clarifications of the rights and responsibilities of plans, enrollees, and health care providers when an enrollment, subscription, or contract is canceled that have proven effective and consistent; at the same time, the regulation replaces current interpretations and clarifications that have proven to problematic and unwieldy. In clarifying and interpreting current state and federal law as it exists in California Health and Safety Code sections 1365 and 1389.21, and 45 Code of Federal Regulations parts 156.270 and 155.430, no existing businesses will be expanded that are currently doing business in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The amended regulations are designed to interpret and clarify state and federal requirements regarding the cancellation, rescission, and nonrenewal of health care coverage. The regulations build on current interpretations and clarifications of the rights and responsibilities of plans, enrollees, subscribers, and health care providers when an enrollment, subscription, or contract is canceled, rescinded, or not renewed. At the same time, the regulation replaces current interpretations proven to be problematic and unwieldy. These regulations will benefit the health and welfare of California residents by ensuring consistent, timely, and predictable processes when health care coverage is canceled, rescinded, or not renewed. California enrollees and subscribers subject to their health care coverage being canceled will also benefit from the updates to grievance rights and responsibilities. In clarifying and interpreting current state and federal law as it exists in California Health and Safety Code Sections 1365 and 1389.21, and 45 Code of Federal Regulations parts 156.270 and 155.430, there will be no adverse effect on the health and welfare of California residents, worker safety, or California's environment.

BUSINESS REPORT:

These amendments to the existing regulations update the information contained within the regulations to clarify and update the requirements of state and federal law regarding the rights and responsibilities when health coverage is canceled, rescinded, or not renewed. The amendments to these regulations are necessary for the health, safety, or welfare of the people of the State of California.